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April 3, 2001

JAMES E. SPEED
Executive Director

Honorable Gary W. Freeman
San Joaquin County Assessor
24 South Hunter Street
Stockton, CA 95202-3273

Re: *Change in Ownership – Transfer of Home Site Permits*

Dear Gary:

This is in response to your letter of July 28, 2000 asking for our views with respect to the proper treatment of transfers of Home Site Permits by members of the Club (Club), a nonprofit corporation. This topic was the subject of a disagreement between your office and the Board's County Property Tax Division in the last survey. We have discussed this with Charles Knudsen, and he concurs with your request to refer the matter to the Board's legal staff for our opinion.

The reason it has taken me nine months to respond to your letter is that this is not a question that lends itself to easy analysis. We have extensively debated and researched this issue in our office. We have considered and rejected theories that the Club should be regarded as a cooperative housing corporation; that the documents constitute leases; that what is created are life estates; and, that the transfers are transfers of ownership interests in a legal entity.

Rather, it is our opinion that, stripped to the basics of the transaction, the transfer of a Home Site Permit is a transfer of a present interest in real property, including the beneficial use thereof, the present value of which is substantially equal to value of the fee interest. Accordingly, the grant or transfer of a homesite by a club member is a change in ownership under section 60 of the Revenue and Taxation Code.

Facts

The subject land is owned by the _____ Club, Inc., a California non-profit corporation formed in 1939.¹ At some point between 1939 and 1965, the Club acquired the subject land in San Joaquin County and changed the purposes for which it was organized. According to the 1965 amendment to the Second Article of the Articles of Incorporation, the Club would thereafter have only two purposes: “(a) to purchase acquire, own, and hold land upon which the members hereof may build, construct, and erect homes and improvements for the purpose of rural residence,” and “(b) to maintain all of its properties, including buildings, rights of way, roads, utilities, levies, and encourage conservation of all natural resources.”²

Membership in the Club is the prerequisite for acquiring possession of a lot (homesite). The requirements for membership are (1) filing an application, (2) receipt of and agreement with the Articles and Bylaws, and (3) payment of the dues and initial fee and any assessments.³ Once the application is approved by the Club’s membership committee, the applicant’s receipt of a Certificate of Membership “constitutes and creates unconditional consent to the Bylaws of the Corporation, and thereby creates an executed contract binding upon such member.” (Article II, Section 6, SJRC Bylaws.)

With each Certificate of Membership, a “Home Site Permit” is issued, which entitles the member to all the privileges of using and occupying the homesite allocated to that member, subject to the conditions and covenants stated in the permit. (Article II, Section 12; Article VI, Section 1.) To maintain one’s standing as a member and permittee, one must pay a monthly fee for club dues, a pro rata share of the Club’s real property taxes, other assessments levied by the Club, and insurance on the land.

The Home Site Permit expressly refers to itself as an “agreement” or “contract” (paragraphs (1), (7), (9), and (10)), between the Club and the member, whereby the club member acquires “the continuous, exclusive and uninterrupted use of” a particular home site, “together with free and uninterrupted ingress, egress and regress thereto.” In exchange, the Home Site

¹ As originally adopted in 1939, the Articles of Incorporation stated (in the Second Article) that the purposes of the corporation were: “(a) To sponsor and assist in every lawful manner the conservation and propagation of all fish and game; (b) To foster and encourage the conservation of the forest, water, streams, lakes and other natural resources of the State of California; (c) To promote and encourage the reforestation of timber lands and the planting to timber of other lands not suitable for cultivation; (d) To assist in the clarification and enforcement of all fish and game and forest laws and regulations to the end that the wild life, the forests, streams, lakes, water and other natural resources of the State of California be preserved for the benefit of the people of the State of California; (e) To promote harmony between the ranchers, stockmen, landowners and sportsmen so as to eliminate so far as possible any damages to any person by reason of the activities of sportsmen of the State of California; (f) To promote and encourage among the members of this Corporation all types of sportsmen’s activities; (g) To buy, purchase, lease or otherwise acquire for the use of the members of this Corporation grounds or land suitable for hunting, fishing and other recreational purposes.”

² The amended Second Article indicates that the Club is a nonprofit mutual benefit corporation (Corporations Code sections 7130 et seq.), formed principally for the benefit of its members and conferring on its members the right to vote in the election of the directors and other matters, as well as the right to receive a certain class of privileges – the most material of which is the right to possess a parcel of land for the construction or purchase of a home.

³ Per Article II, Section 2, of the _____ Club Bylaws, membership is “restricted to persons of United States citizenship, American ideals, and to those found compatible to our family –type Club. Memberships shall be limited to one thousand (1000) members.”

Permit (paragraph 2) binds the member to “at all times be a member in good standing of Club, as defined by its Bylaws,” and requires that the member at “all times shall abide by and shall be subject to and shall be governed by all of the Bylaws, rules and regulations of said Club. .”

The permit states that “It is expressly agreed and understood that said home site is not sold or leased to said Member, that he [the member] is granted the use and occupancy thereof only, and that his right to use and occupy said home site shall continue only so long as each and all of the understandings, provisions, stipulations, conditions, covenants and agreements herein contained, on his part are strictly and promptly kept and complied with.”

Paragraph (8) provides that a member has the “right and privilege of disposing of his membership in said club, and of any structures, improvements, and personal property which he may have erected upon the . . . homesite, in accordance with . . . the by-laws.” The by-laws, in Article VI, Section 8 permit the owner to rent the property if the tenant is a member. Paragraph (9) confers upon the Club, as landowner, the right to evict a member who breaches any covenants or conditions of the contract.⁴

The potential transferee (and new club member) must pay an initiation fee to the Club, be sponsored by two club members, and be approved by the Board of Directors before the transaction may be completed. A transfer is completed when the Certificate of Membership, signed off by the seller, and the Home Site Permit, signed off by the Club, are turned in to the Club office by the seller, and a new Certificate and a new Home Site Permit are issued to the buyer. (See Article II, Sections 1-5 and Article III, Sections 1-3, SJRC Bylaws.)

The Position of the Assessor's Office

As we understand the position of your office, you believe the Club should be treated as a corporation and the members as shareholders, with the change in ownership consequences determined by the statutes and rule provisions for legal entities.

We must respectfully disagree with your position. Members of non-profit corporations have no ownership interests in the corporation that are equivalent to the ownership of stock or a partnership or LLC interest. The statutory exclusion for transfers of ownership interests in entities was intended to recognize the fact that “Shareholders of a corporation have no possessory rights in corporate real property. Nor do partners – even in a general partnership – since their rights to partnership real property are limited to using the real property for partnership purposes.” (*Report of the Task Force on Property Tax Administration*, Assembly Revenue and Taxation Committee, January 1979, page 45).

The transaction here does not fall within this definition of “ownership interests in legal entities,” a category of interests that do not include possessory rights in the property owned by the corporation. Quite the contrary, the Home Site Permit gives the member the right to occupy the property, to build on it, and to transfer it.

⁴ Pursuant to Article IV, Sections 8 and 10 of the Bylaws, the expelled member may sell the buildings and improvements on his homesite to anyone – or the Club may do so – provided that the Board of Directors must approve of the membership of the transferee/purchaser.

As the facts set forth above make clear, a membership in the Club involves *more* than the transfer of mere shareholder interests in a legal entity. It includes the transfer of the Home Site Permit, which expressly grants a contract right to possess and occupy a specific prescribed lot or home site. It empowers the member to the possession of a particular home site and to improve and occupy it for an indefinite period (until death); exclusive to the enjoyment of all other members. Thus, the nature of the relationship for change in ownership purposes is *not* that of a legal entity and its shareholders or partners (who have no personal or possessory rights in the entity assets).

The Position of the Board's Legal Division

We believe the basic law of section 60 applies:

“A ‘change in ownership’ means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.”

As observed in *Industrial Indemnity Co. v. City and County of San Francisco* (1990) 218 Cal.App.3d 999,1010, “The basic definition of section 60 is intended as a guidepost in cases not covered by the specific inclusions or exclusions of other taxation statutes or article XIII A itself.” We think this principle applies here, where the character and detail of the transactions do not fit neatly into any of the statutory inclusions or exclusions found in sections 61 through 69.4.

An interest in property includes any one or various aggregates of rights, privileges, powers and immunities, the totality of which constitutes complete property, and a person who has all of these rights, privileges, powers and immunities is the owner of the property. (See Witkin, *Summary*, Ninth Edition, Real Property, §3). It has been noted also that property is a “complex bundle of rights, duties, powers, and immunities and the pruning away of some or a great many of these elements does not entirely destroy the title. (*People v. Walker* (1939) 33 Cal.App.2d 18)” This view of property ownership has also been likened to a “bundle of sticks,” with each stick in the bundle representing one of these rights, duties, powers and immunities.

Applying these basic general principles to the Home Site Permits, we cannot but conclude that a transfer of a permit is a change in ownership. The majority of the elements or sticks in the bundle of rights now belong to the new member, and the new member is the “owner” even though the Club holds legal title.

Of course, we must test our opinion by applying the facts of this case against the requirements of section 60. We are led to the same conclusion.

First, the Permit constitutes a “transfer.” The Permit “grants to said Member, the continuous, exclusive and uninterrupted use of” the designated home site, “together with free and uninterrupted ingress, egress and regress thereto.” The permit thus transfers these rights and privileges from the club to a member and by its express terms, authorizes the transfer from one member to another member.

Second, the transfer is of a “present interest.” Civil Code §689 states: “A present interest entitles the owner to the immediate possession of the property.” In as much as the Permit grants the continuous, exclusive and uninterrupted use without limitation as to time, it transfers a present interest in the property, not a deferred or future interest.

Third, the transfer under the Permit includes a transfer of the “beneficial use.” The beneficial use is “The right to use property and all that makes the property desirable or habitable . . . even if someone else owns the legal title to the property.” (Blacks Law Dictionary, 7th Edition, p. 1540) This definition squares exactly with the situation before us. The Permit provides that the member “is granted the use and occupancy” and permits the member to erect a dwelling on the site. Paragraph (7) of the Permit grants the member the right to dispose of his membership and any structures, improvements and personal property erected on the home site.

Finally, the interest transferred is “substantially equivalent to the value of the fee” within the meaning of section 60. As stated in the *Report of the Task Force on Property Tax Administration, supra*, at page 39: “The value equivalence test is necessary to determine who is the primary owner of the property at any given time.” It seems clear to us that the holder of the Home Site Permit is the primary owner of the property, because that person holds the vast majority of the incidents of ownership – the primary sticks in the bundle of rights representing ownership: occupancy, exclusive use and enjoyment, the right to build, the right to rent the property and the right to sell the property. (Witkin, *Summary, supra*; *People v. Walker, supra*).

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Lawrence A. Augusta

Lawrence A. Augusta
Assistant Chief Counsel

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cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Charles Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70